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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/582,522	08/24/2000	Zeev Maor	MAOR2	8228
1444 7590 03/04/2009 BROWDY AND NEIMARK, P.L.L.C. 624 NINTH STREET, NW SUITE 300 WASHINGTON, DC 20001-5303			EXAMINER YU, GINA C	
			ART UNIT 1611	PAPER NUMBER
			MAIL DATE 03/04/2009	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

09/582,522

Applicant(s)

MAOR ET AL.

Examiner

GINA C. YU

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 February 2007 and 24 July 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1, 3, 4, 6, 10, 12, 13, 15-19, 21-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3, 4, 6, 10, 12, 13, 16-19, 22-24 is/are rejected.
- 7) ☒ Claim(s) 15 and 21 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on February 9, 2007 has been entered.

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

**Claims 1, 4, 10, 12, 13, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kyotaro et al. (JP 8-104607-A, machine translation) in view of Cantin et al. (US 5922764).**

Kyotaro teaches cosmetics made by blending Dead Sea water or its salts. The reference cites that the cosmetics provide "excellent in the skin ageing preventing effects" and moisture, softness, elasticity, and antibacterial effect to the skin. See [0003]. The composition of the salts of the Dead Sea is described in [0006-0007]. The reference teaches that the salts compose 262.65-323.80 g/L. The reference teaches that the quantity of the Dead Sea in a cosmetic is arbitrary, but it is 0.1-20 wt % of the total amount of cosmetics, while pack or bathing formulations can contain 10-99 wt % of the Dead Sea water. See [0007]. The reference further teaches that the cosmetics

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can be formulated in various forms, including lotions, milky lotions, cream, packs, essence, a bathing article; and contain adjuvants including a fragrance, preservative, a surfactant, and antioxidants. See [0009].

Kyotaro does not teach a clear gel formulation comprising 30-80 % of Dead Sea water.

Cantin teaches stable gelled composition with a high electrolyte content. The reference teaches that the prior art gel composition contains at least one cosmetic and/or dermatological active agent, at least one electrolyte, cetyl hydroxyethyl cellulose and water. See abstract. The reference teaches that formulating a clear gel containing electrolytes is highly desirable in cosmetic art, as electrolytes reduce irritating effects of cosmetic active agents. See col. 1, lines 25 – 60. The electrolytes suitable for the prior art includes inorganic salts, including mono-, di-, trivalent metal ions such as magnesium, potassium, sodium, and calcium, and anions of these salts such as chlorides and sulfates, as shown in col. 3, lines 36 -65. Cantin also teaches the hydrophilic active agents of instant claims 13 and 17 in col. 3, line 66 – col. 4, line 52 and col. 5, lines 59- col. 6, line 6 which include alpha hydroxy acids, anti-inflammatory and antipruritic agents, perfuming alcoholic solutions, moisturizing agents, antioxidants, solvents, etc. The hydrophobic agents of the instant claims are also taught, which include vegetable oils and fatty acids. See col. 5, lines 5 – 32. The preferable emulsifiers are the mixture of nonionic surfactants, including MYRJ 52 (PEG-40 monostearate, a solubilizer), used in the amount of 0.3 - 30 % by weight. See col. 5, lines 33 – 47.

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It would have been obvious to one of ordinary skill in the art at the time the present invention was made to modify the teachings of Kyotaro by formulating a clear gel as motivated by Cantin because both references are directed to utilizing high electrolytes in cosmetic compositions and Cantin specifically teaches a stable gelled formulation comprising a high electrolytes. By combining the teachings of the references, the skilled artisan would have had a reasonable expectation of successfully producing a stable clear gel comprising high Dead Sea water content, which provides the cosmetic benefits of the Dead Sea minerals as mentioned in Kyotaro and reduces irritation of other cosmetic actives, as suggested by Cantin.

While Kyotaro teaches that the quantity of the Dead Sea in a cosmetic is generally 0.1-20 wt % of the total amount of cosmetics and a higher amount for different other formulations, differences in concentration or temperature will not support the patentability of subject matter encompassed by the prior art unless there is evidence indicating such concentration or temperature is critical. "[W]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." See In re Aller, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955). In this case, Cantin teaches that the stable gel formulation can take up to 35 % by weight of the electrolytes, which are of the same kind of mineral salts found in the Dead Sea, and therefore suggests that a higher amount of the Dead Sea water or Dead Sea salts than taught in Kyotaro can be formulated into a clear stable gel by using the teachings of the Cantin reference. Thus, the combined teachings of the references provide sufficient teachings and motivation to

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modify the teachings of the Kyotaro and discover an optimum weight range of the Dead Sea water by routine experimentations.

**Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kyotaro and Cantin as applied to claims 1, 4, 10, 12, 13, and 16 as above, and further in view of Thompson et al. (US 5425954).**

The combined references fail to teach the antioxidants recited in the instant claims.

Thompson teaches compositions for the treatment of skin. The reference teaches that vitamin E/tocopherol acetate prevents the oxidation of fatty acids, thereby protecting lipids and lipoproteins in cell membranes and allowing cells to retain water binding capacity and prevents dry skin. See col. 3, lines 9-24; col. 3, lines 5, line 44-col. 7, line 39.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the composition of the combined references by adding tocopherol acetate as motivated by Thompson because Kyotaro/Cantin teach utilizing antioxidants, and Thompson teaches a specific type of antioxidant and its effects on the composition and the skin. The skilled artisan would have had a reasonable expectation of successfully producing a more stable clear gel containing a high amount of Dead Sea water which further provides the benefits of vitamin E as discussed in Thompson (i.e., protecting lipids and lipoproteins in cell membranes which in turn allows cells to retain moisture and prevents dry skin).

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**Claims 3, 18, 19, and 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kyotaro, Cantin, and Thomas as applied to claims 1, 4, 6, 10, 12, 13, and 16 as above, and further in view of Flick (Cosmetic Additives, 1991).**

While Cantin teaches Myrj 52, polyoxyethylene 40 stearate, a nonionic solubilizer, the references fail to teach the specific solubilizers of the instant claims 3 and 23.

Flick teaches Myrj 52 (polyoxyethylene 40 stearate) and polyoxyethylene 20 sorbitan monolaurate have hydrophilic lipophilic balance of 16.9 and 16.7, respectively. See p. 409 and 411.

It would have been obvious to one of ordinary skill in the art at the time of the present invention to modify the teachings of the references by substituting polyoxyethylene 40 stearate with polyoxyethylene 20 sorbitan monolaurate as motivated by Flick, because the latter teaches these nonionic surfactants share similar polarity and useful in making cosmetic compositions. The skilled artisan would have had a reasonable expectation of successfully producing a similar stable gel containing high electrolytes.

**Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kyotaro and Cantin as applied to claims 1, 4, 10, 12, 13, and 16 as above, and further in view of Boratyn (US 6136329 A).**

While Kyotaro and Cantin teach adding fragrances and plant oils to cosmetics, the combined references fail to teach the specific fragrance of the instant claim.

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Boratyn teaches that sandalwood, patchouli, and lavender oils are well known essential oils suitable for cosmetic compositions. See col. 3, lines 55 – col. 4, line 3.

The reference particularly teaches in col. 4, lines 35 – 51;

lavender oil can provide “deodorizing, balancing, regenerative, circulatory stimulant, detoxifying, and tonic qualities to a user. It may be antibacterial, antifungal, antiseptic, anodyne and is valued as a medicinal oil. It can help with the treatment of acne, burns and fluid retention. It may also be used in treatment of athlete's foot and as an insect repellent. Good for all skin types, particularly dry skin.

It would have been obvious to one of ordinary skill in the art at the time of the present invention to modify the composition of Kyotaro and Cantin by incorporating the essential oils of Boratyn, particularly lavender oil, because Boratyn teaches that lavender oil provides pharmaceutical benefits including deodorizing, regenerative, and antimicrobial properties. Since Kyotaro and Cantin already teaches using plant oils with the compositions of the references, the skilled artisan would have had a reasonable expectation of successfully producing a stable gel comprising a high content of Dead Sea water and lavender oil.

#### ***Allowable Subject Matter***

Claims 15 and 21 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 15 and 21 are viewed allowable since Cantin teaches using a specific type of hydroxyethylcellulose derivatives only while teaching away from using the gelling agents of the instant claims. See Cantin, col. 1, lines 37 -64.



***Oath/Declaration***

Declaration filed on July 24, 2008 has been fully considered, but does not place the application in condition for allowance.

The declaration is presented to rebut the previous obviousness rejection made under 35 U.S.C. § 103 (a) in view of Melaçon (FR 2242971, translation), which teaches using benzalkonium chloride, a cationic surfactant, to make a clear composition comprising sea water; and further in view of Flick (Cosmetic Ingredients) which teaches using nonionic solubilizer to solubilize hydrophobic agents to make a transparent composition.

Experiments 161-164 show 6 % of benzalkonium chloride (cationic) produces clear solution from sea water, while the same surfactant produced turbid solutions of 30%, 50%, and 80 % Dead Sea water. Experiments 175-181 show substituting the surfactant with a nonionic solubilizer Tween 20 (polyoxyethylene sorbitan laurate) produced clear compositions from the Dead Sea water with or without the presence of a hydrophobic agent.

The presented data supports declarant's argument that the problem of precipitation in compositions comprising Dead Sea water is not solely due to the presence of hydrophobic agent but due to the choice of surfactants. However, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985). In this case, declarant asserts the motivation to use a nonionic

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solubilizer as proposed by the Office differs from applicant's own motivation. However, the present claim 1 recites a combination of both Dead Sea water and hydrophobic agent, and the combining these components with a nonionic solubilizer as motivated by Flick would have necessarily resulted in the same or similar composition of the claimed invention. Nonetheless, the rejection is withdrawn in view of the new prior art Cantin, which teaches that using a nonionic solubilizer and a gelling agent in making a clear gel comprising a high electrolyte contents has been known in the art.

### ***Response to Arguments***

Applicant's arguments filed on January 8, 2007 have been fully considered but they are moot in view of the new grounds of rejections.

### ***Conclusion***

Claims 1, 3, 4, 6, 10, 12, 13, 16-19, 22-24 are rejected.

Claims 15 and 21 are objected to.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to GINA C. YU whose telephone number is (571)272-8605. The examiner can normally be reached on Monday through Friday, from 9:00AM until 5:30 PM..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sharmila Landau can be reached on 571-272-0614. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gina C. Yu/  
Primary Patent Examiner, Art Unit 1611